Supreme Court, U.S.
FILED

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NO.

IN THE UNITED STATES SUPREME COURT

MARYFRANCES CASSELL
PETITIONER
VS.
LANCASTER MENNONITE CONFERENCE,
ERVIN R. STUTZMAN,
LANDISVILLE DISTRICT,
MOUNT JOY MENNONITE CHURCH,
JOE SHERER,
SHELLY SHELLENBERGER,
ROBERT H. GARBER,
CATHARINE LEATHERMAN,
H. FLORENCE MILLER
AND
MARTHA M. EBERSOLE
RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
PETITON FOR WRIT OF CERTIORARI
AND APPENDIX

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52 pp

QUESTION PRESENTED FOR REVIEW

Is an individual's choice of where she will live in the United States a part of the constitutionally guaranteed right to interstate travel and thereby protected under 42 U.S.C. § 1985(3) from a private conspiracy designed to drive that individual from her home?

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OPINIONS OF OTHER COURTS

The district court filed an Order on April 26, 1993 dismissing Count I of Petitioner's Complaint with prejudice for failure to state a claim upon which relief can be granted and dismissed the pendant state claims in Counts II, III and IV without prejudice. (A3). The Court of Appeals affirmed the District Court's judgment without opinion. (A1).

STATEMENT OF JURISDICTION

On December 28, 1993, the Court of Appeals for the Third Circuit affirmed the judgment of the District Court for the Eastern District of Pennsylvania dismissing Petitioner's claims for failure to state a claim upon which relief can be granted. The Court has jurisdiction over this Petition for Writ of Certiorari pursuant to 28 U.S.C. § 1254.

STATEMENT OF STATUTES INVOLVED

At issue in this case is 42 U.S.C. § 1985(3), which provides:

> (3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery

of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

STATEMENT OF THE CASE

On or about August 17, 1992, Petitioner, Maryfrances Cassell (hereinafter referred to as "Cassell"), filed a pro se Complaint in the district court alleging violations of 42 U.S.C. § 1983, 42 U.S.C. § 1985 and the Racketeer Influenced and Corrupt Organizations Act (hereinafter referred to as "RICO"), 18 U.S.C. §§ 1961, et seq. On August 31, 1992, Cassell, again acting pro se, filed an Amended Complaint that again alleged violations of 42 U.S.C. §§ 1983, 1985 and RICO. On September 16, 1992, Respondents Lancaster Mennonite Conference, Ervin R. Stutzman, Landisville District, Mount Joy Mennonite Church, Joe Sherer, Shelly Shellenberger, Robert H. Garber, Catharine Leatherman, H. Florence Miller and Martha M. Ebersole (hereinafter collectively referred to as "the Conference") filed a Motion to Dismiss the Amended Complaint pursuant to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure and sought sanctions pursuant to Rule 11. Cassell, acting pro

se, answered this Motion on September 24, 1992. On October 23, 1992, the district court entered an Order denying the Conference's Motion to Dismiss. The Conference filed an answer to Cassell's Amended Complaint on November 2, 1992. On November 27, 1992, Cassell filed, pro se, a Motion to Disqualify the Conference's attorneys because of a conflict of interest. On December 11, 1992, present counsel entered his appearance in the district court for Cassell. On January 8, 1993, the district court denied Cassell's Motion to Disqualify Counsel.

On March 16, 1993, pursuant to leave granted by the district court on March 9, 1993, counsel for Cassell filed a Second Amended Complaint. (A7). In Count I of the Second Amended Complaint, Cassell alleges that because she is a Christian Scientist, the Respondents (comprised of a Mennonite Church, its governing body and individual officials and members of these organizations) engaged in a long term pattern of harassment in furtherance of a conspiracy to force her to leave her home in Mount Joy, Pennsylvania after she had formed a business

relationship with one A. Arlene Miller, a Mennonite and the sister of Respondent H. Florence Miller. This conduct, Cassell contends, violates 42 U.S.C. § 1985(3). In Counts II, III and IV of her Complaint, Cassell pled causes of action for breach of contract and defamation under the laws of the Commonwealth of Pennsylvania.

The Conference filed a Motion to Dismiss Cassell's Second Amended Complaint pursuant to Rule 12(b)(1) and 12(b)(6) and again sought sanctions under Rule 11. On April 26, 1993, the district court, after converting the motion to one under 12(b)(6), dismissed Cassell's § 1985(3) claim with prejudice, dismissed without prejudice her state law claims and denied the Conference's Motion for Sanctions.

Cassell filed a timely Notice of Appeal in the Court of Appeals for the Third Circuit on May 5, 1993. On December 28, 1993, the Court of Appeals affirmed, without opinion, the order of off the district court.

ARGUMENT

The Court should grant this Petition for Writ of Certiorari because the holding of the Court of Appeals threatens one of the most basic concepts of American democracy - the right of an American citizen to live where she wants for as long as she wants without interference from either the government or her neighbors. In affirming the decision of the district court, the Court of Appeals has held that such a right does not exist in the Third Circuit. In the Third Circuit, the Constitution no longer guarantees a Christian Scientist the right to live peacefully in her home and community, free from unremitting harassment by Mennonites designed to force her to leave her home. This is so, in the view of the Court of Appeals, because the right to interstate travel protects a citizen who wants to move from State A to State B from interference during her travel, but that basic right embodied in the Constitution does not offer her any protection from those in State B, who, because of their hatred of her religion or for other

equally obnoxious reasons, conspire after she arrives to make her life so miserable and intolerable so as to force her to move from her new home. This narrow view does not recognize that the inalienable right of American citizens protected by the Constitution is really not the right to travel, qua travel, but the right to travel to a destination, whether to visit or to reside. It is a citizen's freedom to choose where she will live, with the knowledge that neither the government nor individual citizens have the right to approve or disapprove of that choice, that the Constitution protects. In holding that Cassell has not stated a claim under § 1985(3) because her allegations do not implicate the right to interstate travel, the Court of Appeals has altered a basic precept of American citizenship and created an important constitutional and statutory issue that this Court should resolve.

A. The Right To Travel Encompasses The Right To Reside Peacefully.

Although Americans have always taken for granted their right to decide where they will live and their unfet-

tered ability to travel to that new location, that right is still denied to a large portion of the world's population. Even in Great Britain, from which such a large part of our jurisprudence springs, the right of a citizen to live where he or she chooses is relatively recent. Professor Chaffee in his essay on Freedom of Movement[1] points out that in 17th century England, a laborer who moved from his parish to another in search of work was subject, even if he found a job and was working in the new parrish, to being forcibly returned to his original parish at the whim of the parrish churchwarden or overseer. Even as late as the time of the American Revolution, an Englishman still did not have the liberty to choose where he or she would live.

Things have been different in the United States. This Court has recognized, almost from the adoption of the Constitution, a right of interstate travel. Although nowhere specifically enumerated in the Constitution, the

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1. Z. Chaffee, Three Human Rights In The Constitution, 162, 165 (1956).

Court has found such a right in the Privileges and Immunities Clause of Article IV of the Constitution[2], the Privileges and Immunities Clause of the Fourteenth Amendment[3], as a right of national citizenship[4], in the Commerce Clause[5], in the Equal Protection Clause of the Fourteenth Amendment[6] and as a matter of substantive due process

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2. U.S. Const. art. IV, § 2, cl. 1. See, e.g., Slaughter-House Cases, 83 U.S. (16 Wall.) 36 (1873).

3. U.S. Const. amend. XIV, § 1. See, e.g., Cornfield v. Coryell, 6 F.Cas. 546 (C.C.E.D., Pa. 1825) (No. 3230); United States v. Wheeler, 254 U.S. 281 (1920).

4. See, e.g., Crandall v. Nevada, 73 U.S. (6 Wall.) 35 (1867).

5. U.S. Const. art. 1, § 8, cl. 3. See, e.g., Edwards v. California, 314 U.S. 160 (1941).

6. U.S. Const. amend. XIV, § 1. See, e.g., Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974); Shapiro v. Thompson, 394 U.S. 618 (1969).

under both the Fifth and Fourteenth Amendments[7]. The Court has, however, only infrequently articulated what is encompassed by this basic right.

In United States v. Wheeler, 254 U.S. 281 (1920), the court considered a criminal indictment charging the defendants with forcibly deporting 221 United States citizens from their homes in Arizona to New Mexico. In defining the right to interstate travel, the Wheeler Court observed:

> In all the states, from the beginning down to the adoption of the Articles of Confederation, the citizens thereof possessed the fundamental right, inherent in citizens of all free governments, peacefully to dwell within the limits of their respective states, to move at will from place to place therein, and to have free ingress thereto and egress therefrom, with a consequent authority in the states to forbid and punish violations of this fundamental right.

Id. at 293 (citation omitted, emphasis added). While the

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7. U.S. Const. amend. V and amend. XIV, § 1. See, e.g., Kent v. Dulles, 357 U.S. 116 (1958).

indictment in Wheeler was quashed because the Court found that the right of interstate travel proscribed only state action, not the purely private conspiracy there at issue, it recognized that the right to travel encompassed a citizen's right to dwell peacefully wherever he or she chooses. In United States v. Guest, 383 U.S. 745 (1966), the Court held that the right to interstate travel, in addition to protecting a citizen against government action, also protected a citizen from the private conspiracy condemmed in Wheeler.

The Court most recently considered the scope of the right to interstate travel in Bray v. Alexandria Women's Health Clinic, ___U.S.___, 113 S.Ct. 753 (1993), the authority relied upon by the district court in granting the Conference's Motion to Dismiss. In Bray, the Court held that abortion protesters did not interfere with the interstate travel rights of women seeking abortions because they did not erect an actual barrier to the interstate travel of women seeking abortions. Because Cassell's Second Amended Complaint neither alleges that the Conference erected an

actual barrier to Cassell's interstate travel nor treated interstate travelers differently from intrastate travelers, the district court concluded that the right to interstate travel was not implicated by Cassell's Complaint.[8]

The district court's holding that the Constitution does not afford any protection to a citizen from those who would seek to drive her from her home can only be described as revolutionary. The district court's reliance on this Court's decision in Bray, a case that has little applicability to the issues raised by Cassell to support its conclusion, is misguided. The Court of Appeals' affirmance of the district court's opinion has substantially altered one of the basic underpinnings of American democracy - the right

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8. Indeed, the district court seemed to look favorably upon defendants' actions, stating that "Insofar as the defendants wanted her to leave Mount Joy, they were encouraging interstate travel. (A5) (emphasis added)

of a citizen to live peacefully where he or she chooses. The issue is of such importance that this Court should grant this Petition for Writ of Certiorari.

Respectfully submitted,

DESSEN, MOSES & SHEINOFF

BY: _____
DAVID S. DESSEN, ESQUIRE
Attorney for Petitioner

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 93-1436, 93-1464

MARYFRANCES CASSELL,

Appellant in 93-1436

v.

LANCASTER MENNONITE CONFERENCE; LANDISVILLE DISTRICT; MOUNT JOY MENNONITE CHURCH; H. FLORENCE MILLER; MARTHA M. EBERSOLE: ERVIN R. STUTZMAN; JOE SHERER; SHELLY SHELLENBERGER; ROBERT H. GARBER; CATHERINE LEATHERMAN

Lancaster Menonite Conference,
Appellant in 93-1464

Appeal from the United States District Court
for the Eastern District of Pennsylvania
D.C. Civil Action No. 92-04778
(District Judge: Honorable Edward N. Cahn)

Submitted Under 3rd Circuit LAR 34.1(a)
December 6, 1993

Before: BECKER, NYGAARD, WEIS, Circuit Judges

A1

JUDGMENT ORDER

After consideration of all contentions raised by appellant and essentially for the reasons set forth in the order of Judge Cahn, it is

ADJUDGED AND ORDERED that the judgment of the district court entered April 26, 1993 be and is hereby AFFIRMED.

Parties to bear their own costs.

BY THE COURT:

Circuit Judge

Attest:

P. Douglas Sisk, Clerk

DEC 28 1993

Certified as a true copy and issued in lieu of a formal mandate on January 19, 1994

Teste:

Clerk, United States Court of Appeals for the Third Circuit

A2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARYFRANCES CASSELL	: Civil Action
V.	:
ERVIN R. STUTZMAN, et al.	: No. 92-4778

ORDER

CAHN, J. April 26, 1993

AND NOW, this 26th day of April, 1993, upon consideration of defendants' Motions, IT IS ORDERED as follows:

1. Defendants' Motion to Dismiss is GRANTED;

2. Count I is dismissed with prejudice, and Counts II, iII, and IV are dismissed without prejudice;

3. Defendants' Motion for Sanctions is DENIED;

4. The clerk is directed to close the docket for statistical purposes.1

BY THE COURT:

Edward N. Cahn, J.

A3

1. In Count I of the complaint, plaintiff alleges that defendants conspired to deprive her of the right of interstate travel, thereby violating the first clause of 42 U.S.C. § 1985(3). In Counts II, III, and IV, plaintiff asserts pendent state law claims that sound in contract and tort.

Defendants have moved, pursuant to Fed. R. Civ. P. 12(b)(1), to dismiss Count I for lack of subject matter jurisdiction. They have also moved, pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss Counts II, III, and IV for failure to state a claim. Defendants have not discussed the different standards which apply to these two types of motions. To prevail on a Rule 12(b)(1) motion, defendants must demonstrate that the claim is "made solely for the purpose of obtaining jurisdiction" or is "wholly insubstantial and frivolous." Growth Horizons Inc. v. Delaware County, 983 F.2d 1277, 1280 (3d Cir. 1993) (quoting Bell v. Hood, 327 U.S. 678 (1946)). Defendants have argued only that plaintiff's factual allegations are legally insufficient. Therefore, the court will convert defendants' Rule 12(b)(1) motion to a Rule 12(b)(6) motion. In fact, plaintiff urges the court to do so:

> The only issue presently before the Court on the Defendants' Motion is the Court's subject matter jurisdiction. However, Plaintiff respectfully suggests that in the interests of judicial economy and the upcoming trial date, the Ccurt find, based upon the briefs and memoranda before it, that Plaintiff in Count I of her Complaint has stated a claim upon which relief can be granted so as to avoid the possibility of the Defendants filing another Motion to Dismiss under Rule 12(b)(6).

Plaintiff's Memorandum of Law at 10. This is particularly appropriate because Count I is the sole basis for federal jurisdiction.

A plaintiff proceeding under the first clause of § 1985(3) must allege, inter alia, that she was deprived of a right that is constitutionally protected against private interference. Bray v. Alexandria Women's Health Clinic, 1993 U.S. LEXIS 833 at *17 (January 13, 1993). The court accepts plaintiff's factual allegations as true for purposes of this motion. Schrob v. Catterson, 948 F.2d 1402, 1405 (3d Cir. 1991). In paragraph 20 of the complaint, plaintiff alleges that defendants "conspired, confederated and agreed to drive Plaintiff from her home in Mount Joy, Pennsylvania . . . ." In paragraph 25, plaintiff concludes that "the above described conspiracy [has] deprived Plaintiff of her right to interstate travel, specifically her right to live peaceably in Mount Joy, Pennsylvania." The right of interstate travel is constitutionally protected against private interference, Griffin v. Breckenridge, 403 U.S. 88, 105 (1971), but it is not implicated here.

The right of interstate travel does not include the right to stay in one place, nor does it protect persons who do not purport to be interstate travelers. In Bray, the Supreme Court held that the federal guarantee of interstate travel "protects interstate travelers against two sets of burdens: 'the erection of actual barriers to interstate movement' and 'being treated differently' from intrastate travelers." 1993 U.S. LEXIS 833 at *20. Plaintiff faced neither burden. Plaintiff does not allege that defendants hindered her efforts to travel interstate, nor does she allege that she was treated differently from intrastate travelers. Insofar as the defendants wanted her to leave Mount Joy, they were encouraging interstate travel. Having found Count I to be legally insufficient, the court will dismiss with prejudice. The court will not address the legal sufficiency of Counts II, III, and IV.

The court may decline to exercise supplemental jurisdiction over state law claims when it has dismissed all claims over which it had original jurisdiction. 28 U.S.C. § 1367(c)(3). The court must "take into account generally accepted principles of 'judicial economy, convenience, and fairness to the litigants.'" Growth Horizons, 983 F.2d at 1284 (citation omitted). Plaintiff's remaining claims implicate state common law principles and should be adjudicated in state court. It will be more convenient for the parties to try the case in Lancaster County where they all reside or do business. Accordingly, the court will dismiss Counts II, III, and IV without prejudice. Since the court has not ruled on the merits of these claims, it would be inappropriate to impose Rule 11 sanctions.

AL

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARYFRANCES CASSELL	:	CIVIL ACTION
	:	
v.	:	
	:	
	:	NO. 92-CV-4778
LANCASTER MENNONITE CONFERENCE, LANDISVILLE DISTRICT, MOUNT JOY MENNONITE CHURCH, ERVIN R. STUTZMAN, JOE SHERER, SHELLY SHELLENBERGER, ROBERT H. GARBER, CATHARINE LEATHERMAN, H. FLORENCE MILLER and MARTHA M. EBERSOLE	:	JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT

PARTIES

1. Plaintiff, Maryfrances Cassell, is an adult individual residing in the Borough of Mount Joy, County of Lancaster, in the Commonwealth of Pennsylvania.

2. Defendant, Lancaster Mennonite Conference (here-inafter referred to as "Conference"), is an unincor-

porated association existing and operating under the laws of Commonwealth of Pennsylvania with its principal place of business at 2160 Lincoln Highway East, Lancaster, Pennsylvania.

3. Defendant, Landisville District (hereinafter referred to as "District"), is an unincorporated association of individual churches within the Conference, existing and operating under the laws of Commonwealth of Pennsylvania, with offices at the Conference address.

4. Defendant, Mount Joy Mennonite Church, is one of the group of churches comprising the District, located at 26 Donegal Springs Road, Mount Joy, Pennsylvania.

5. Defendant, Ervin R. Stutzman (hereinafter referred to as "Stutzman"), is an adult individual, Moderator of the Conference and Bishop of the District with offices at the Conference address.

6. Defendant, Joe Sherer (hereinafter referred to as "Sherer"), is an adult individual and pastor of the Mount Joy Mennonite Church, with offices at the church

address.

7. Defendant, Shelly Shellenberger (hereinafter referred to as "Shellenberger"), is an adult individual and is or was a minister of the Mount Joy Mennonite Church, with offices at the church address.

8. Defendant, Robert H. Garber (hereinafter referred to as "Garber"), is an adult individual and a minister of the Mount Joy Mennonite Church, with offices at the church address.

9. Defendant, Catharine Leatherman (hereinafter referred to as ("Leatherman"), is an adult individual and a deaconess of the Mount Joy Mennonite Church, with offices at the church address.

10. Defendants, H. Florence Miller (hereinafter referred to as "Florence Miller") and Martha M. Ebersole (hereinafter referred to as "Ebersole") are adult individuals and members of the Mount Joy Mennonite Church, residing at 363 North Barbara Street, Mount Joy, Pennsylvania.

JURISDICTION AND VENUE

11. This Court's original jurisdiction in this matter is based upon 28 U.S.C. § 1331 and 28 U.S.C. § 1343. This Court has supplemental jurisdiction of Plaintiff's state law claims under 28 U.S.C. § 1367.

12. Venue is proper in this district as all of the parties reside within the Eastern District of Pennsylvania.

FACTS

13. In 1964, Plaintiff was approached by A. Arlene Miller (hereinafter referred to as "Miller") who sought Plaintiff's support and assistance in establishing and operating a music studio so Miller could continue her work as a piano teacher.

14. Sometime thereafter, Miller's family, including Defendant, Florence Miller, became aware of the ongoing discussions between Miller and Plaintiff about the music studio and strenuously objected to any arrangement between Miller and Plaintiff because Plaintiff was a Christian Scientist and not a member of the Mennonite religion

as was Miller and her family.

15. Thereafter, Miller sought assistance from Henry Garber, who was then the pastor of the Mount Joy Mennonite Church, in abating the opposition of her family and other Mennonites to any type of arrangement between Plaintiff and Miller.

16. Subsequently, Raymond Charles, Henry Garber, Henry Frank, Amos Hess and George Leaman, all officers, directors and/or officials of Defendants Conference, District and/or the Mount Joy Mennonite Church, requested and urged Plaintiff to assist and support Miller in Miller's efforts to establish a music studio where Miller could continue her work as a piano teacher and if Plaintiff would do so, they as officers, directors and/or officials of the Conference, District and/or the Mount Joy Mennonite Church promised to control any opposition from the Miller family or other Mennonites in the community to the undertaking.

17. In full reliance on these assurances and as part of the agreement reached with Miller, beginning in

1964, Plaintiff arranged to have, solely and exclusively at Plaintiff's cost and expense, a sound proof music studio constructed in her home at 216 Park Avenue, Mount Joy, Pennsylvania, the cost of which was in excess of Fifty Thousand Dollars ($50,000.00).

18. The studio, known as the A. Arlene Miller Studio of Pianoforte, with Plainiff serving as the artistic director and Miller serving as piano teacher, operated from approximately 1966 to approximately December, 1980, for the exclusive purpose of providing Miller with a location from which to offer piano lessons.

19. During the approximately fifteen (15) years that the studio was in operation, Plaintiff helped defray the costs of operation of the studio and in addition contributed to the support of Miller who resided with Plaintiff at 216 Park Avenue, Mount Joy, Pennsylvania.

20. Sometime prior to December 22, 1980, the exact date being unknown to Plaintiff, Nathan Showalter, Terry Fullmer, Norman Dominick, Defendants Conference, District, the Mount Joy Mennonite Church, Sherer,

Shellenberger, Garber, Leatherman, Florence Miller, Ebersole and others presently unknown to Plaintiff, unlawfully, maliciously and improperly conspired, confederated and agreed to drive Plaintiff from her home in Mount Joy, Pennsylvania in order to end what they believed to be an unholy alliance between Plaintiff, a Christian Scientist and Miller a Mennonite.

21. In or about 1983, Defendant Stutzman joined the conspiracy and adopted its purpose.

22. In furtherance of the said conspiracy, the Defendants and others at their direction:

a. Entered Plaintiff's home on December 22, 1980, and removed personal property of substantial value belonging to Plaintiff.

b. Demanded, on December 23, 1980, that Plaintiff pay Miller an unspecified amount of money and leave Mount Joy, Pennsylvania, and when Plaintiff refused:

1. Caused Miller to file a false complaint against Plaintiff, who held a real estate brokers' license, with the Pennsylvania Real Estate Commission on or about November 2, 1981.

2. Caused a false complaint to be filed against Plaintiff with the Internal Revenue Service in or about the Spring of 1983.

3. Caused to be organized and presented to the Mount Joy community in or about June, 1985 a presentation allegedly dealing with cults in which Christian Science was referred to as being "of the devil" and in which Plaintiff was referred to as the "evil one".

c. Agreed to two Statements of Retractions providing, in part, compensation to Plaintiff for the harm they caused her and then refused to abide by their agreements. Upon information and belief, it was never the Defendants' intention to abide by their said Agreements but they executed them to further harm, harass and annoy Plaintiff, in an effort to drive her from her home.

d. Maliciously and improperly, in June, 1991, interfered with a settlement negotiated by Plaintiff and Miller that would have resolved all outstanding litigation between them, to further harm, harass and annoy Plaintiff in an effort to drive her from her home.

e. Caused a defamatory letter to be sent in February, 1992, to Plaintiff's church in Boston, Massachusetts, accusing Plaintiff of physically abusing Miller and mismanaging Miller's money, knowing that said accusations were false, in an effort to drive Plaintiff from her home.

COUNT I - 42 U.S.C. § 1985(3)

23. Plaintiff, Maryfrances Cassell, hereby incorporates by reference paragraphs 1 to 22 inclusive, as though each and every allegation was set forth at length.

24. The Defendants' actions in furtherance of the above described conspiracy have deprived Plaintiff of her right to interstate travel, specifically her right to live peaceably in Mount Joy, Pennsylvania.

25. The Defendants' actions in furtherance of the above described conspiracy have deprived Plaintiff of the equal privileges and immunities of the law and the equal protection of the law.

26. The Defendants' actions are motivated and inspired because of their hatred of Christian Science and Plaintiff's beliefs in the teachings of Christian Science.

27. Solely as a result of the Defendants' actions in furtherance of the above described conspiracy, Plaintiff's investment in the music studio has become worthless, Plaintiff's accounting and real estate businesses have

become worthless, Plaintiff's ability to earn income in the Mount Joy community has been destroyed, Plaintiff has suffered a substantial loss of income as well as loss of her reputation, and has been humiliated, embarrassed and caused to suffer severe emotional distress.

28. The Defendants' actions set forth above are so malicious and outrageous as to entitle Plaintiff to punitive damages.

WHEREFORE, Plaintiff, Maryfrances Cassell, demands judgment against the Defendants, jointly and severally, for compensatory damages in an amount in excess of One Hundred Thousand Dollars ($100,000.00) and punitive damages in an amount in excess of One Million Dollars ($1,000,000.00), plus interest, costs of suit and attorney's fees.

COUNT II - CONTRACT

29. Plaintiff, Maryfrances Cassell, hereby incorporates by reference paragraphs 1 to 22 inclusive as though each and every allegation was set forth at length.

30. On or about September 23, 1988, Plaintiff and Defendants Conference, District and the Mount Joy Mennonite Church, through their authorized agent, Robert Garber, entered into the contract attached hereto as Exhibit "A".

31. The economic loss sustained by Plaintiff as a result of the Defendants' conduct is Nine Hundred and Fifty Thousand Dollars ($950,000.00).

32. Plaintiff has demanded payment of the amount due under this contract but Defendants Conference, District and the Mount Joy Mennonite Church have refused to pay same.

WHEREFORE, Plaintiff, Maryfrances Cassell demands judgment against Defendants Conference, District and the Mount Joy Mennonite Church, jointly and severally, in the amount of Nine Hundred and Fifty Thousand Dollars ($950,000.00), plus interest and costs of suit.

COUNT III - CONTRACT

33. Plaintiff, Maryfrances Cassell, hereby

incorporates by reference paragraphs 1 to 22 inclusive as though each and every allegation was set forth at length.

34. On or about October 1, 1988, Plaintiff and Defendants Conference, District and the Mount Joy Mennonite Church, through their authorized agent, Ervin Stutzman, entered into the contract attached hereto as Exhibit "B".

35. The economic loss sustained by Plaintiff as a result of the Defendants' conduct is Nine Hundred and Fifty Thousand Dollars ($950,000.00).

36. Plaintiff has demanded payment of the amount due under this contract but Defendants Conference, District and the Mount Joy Mennonite Church have refused to pay same.

WHEREFORE, Plaintiff, Maryfrances Cassell demands judgment against Defendants Conference, District and the Mount Joy Mennonite Church, jointly and severally, in the amount of Nine Hundred and Fifty Thousand Dollars ($950,000.00), plus interest and costs of suit.

COUNT IV - DEFAMATION

37. Plaintiff, Maryfrances Cassell, hereby incorporates by reference paragraphs 1 to 22 inclusive as though each and every allegation was set forth at length.

38. On or about August 18, 1991, at the Mount Joy Mennonite Church, during a "public confessional", Miller and Defendants Stutzman, Shellenberger, Garber and Florence Miller uttered untrue and defamatory statements about Plaintiff, knowing the same to be false, to members of the church and others present at that time.

39. In February 1992, Defendant Stutzman, individually and as Moderator of the Conference, uttered untrue and defamatory statements about Plaintiff, knowing the same to be false, to officials of the First Church of Christ, Scientist in Boston, Massachusetts.

40. In or about the Fall of 1992, Defendant Stutzman, individually and as Moderator of the Conference, uttered untrue and defamatory statements about Plaintiff, knowing the same to be false, to David Thomas

and others.

41. Solely as a result of the untrue and false statements made and published by the Defendants as set forth above, Plaintiff has suffered great and irreparable harm to her reputation and standing in the community as well as severe emotional distress.

42. The Defendants' actions set forth above are so malicious and outrageous as to entitle Plaintiff to punitive damages.

WHEREFORE, Plaintiff, Maryfrances Cassell, demands judgment against the Defendants, jointly and severally, for compensatory damages in an amount in excess of One Hundred Thousand Dollars ($100,000.00)

and punitive damages in an amount in excess of One Million Dollars ($1,000,000.00), plus interest and costs of suit.

DESSEN, MOSES & SHEINOFF

BY _____
DAVID S. DESSEN, ESQUIRE
Attorney for Plaintiff
1814 Chestnut Street
Philadelphia, PA 19103
215-564-5600 ext.253

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CERTIFICATE OF SERVICE

DAVID S. DESSEN, ESQUIRE hereby certifies that a true and correct copy of the within Second Amended Complaint was served on below listed counsel, by first class mail, postage prepaid, on March 16, 1993:

Vivian B. Narehood, Esquire
GIBBEL, KRAYBILL & HESS
41 East Orange Street
Lancaster, PA 17602

BY: _____
DAVID S. DESSEN, ESQUIRE

DATE: _____

A22

PROPOSED RETRACTIONS
PREAPARED J0INTLY BY ROBERT E. GARBER
AND MARYFRANCES CASSELL

STATEMENT OF RETRACTI0NS BY THE
MENNONITE CHURCH THE LANDISVILLE DISTRICT
AND THE LANCASTER MENNONITE CONFERENCE
LANCASTER COUNTY, PENNSYLVANIA
CONCERNING MARYFRANCES CASSELL

1. We of the Mennonite Church, the Landisville District and the Lancaster Mennonite Conference of Lancaster County, Pennsylvania, do hereby admit that we acted in error in the reversal of our commitment to Maryfrances Cassell of Mount Joy, Pennsylvania. We admit that this reversal was made without approaching Maryfrances or forewarning her of our reversal. We regret that a proper investigation was not conducted by the minister in charge, so that this reversal would not have occurred.

2. We regret that we were unsuspectingly drawn into a conspiracy which led us to participate in the disruption of Maryfrances Cassell's household and the music studio which we endorsed, thus violating our trust upon which Maryfrances had every reason to rely. We admit and regret that our ensuing conduct, calumny, evil thinking, obstructing communication, refusing reconciliation, interfering with those working for healing, turning friends into foes, --that our prejudicial attitude and treatment

of Maryfrances Cassell during these past eight years has been unfounded and unjust.

3. We have no concrete evidence of any of our evil thoughts and slander concerning Maryfrances Cassell and her conduct in her household and the music studio endorsed by us, and we regret, renounce and retract all of our evil thinking and slander-- especially any succession of immorality, abuse, undue influence, dishonesty, demonolatry, or demagoguery -- which we have attributed to Maryfrances Cassell, there being no known evidence nor known foundation in fact of any of this slander as it was based solely upon hearsay planted by those who formed the conspiracy which we ,unwittingly joined.

4. The life record of Maryfrances Cassell has proven her to be honest and honorable and of great professional and personal integrity and Christian character. Since God only knows the hearts of others, we are unable to go farther than to let Maryfrances' life record stand undisturbed; "Give her the fruit of her hands; and let her own works praise her in the gates." (Proverbs 31:31)

5. We acknowledge that we have known from the outset that Maryfrances Cassell is a life long student of Christian science, and therefore we should have approached her when we desired to learn about Christian Science, rather than adopting a questionable source and circulating a derogatory book about Christian Science, thereby causing great damage. We hereby retract our accusations about Christrian Science being evil and Maryfrances being "the evil one".We acknowledge that in general Christendom has recognized Christian Science as a Christian denomination which provides a systen to right our relationship with God. Because the Mennonite premises differ for applying this system and for the understanding Mennonites have of the Bible, we have at times given responses to Maryfrances which have been interpreted as evil thoughts, desire to cast doubts upon her integrity and

honesty, condemnation or desire to destroy her. We ask forgiveness from her and from God where this has been the case. We go on record as intending, by God's help, to avoid giving such responses in the future.

6. We have never observed the household of Maryfrances Cassell first hand. Therefore we have no right to condemn it on that basis. If whatever we have done has cast any doubts upon the integrity, morals, conduct, or honor of Maryfrances Cassell and her household, it is inappropriate, and we are sorry and hereby retract it.

7. We renounce and retract our discourse maligning the character of Maryfrances Cassell's mother, all of which is utterly false. This discourse was presented by Bishop Ervin Stutzman without ever having met her mother. We acknowledge that those who were privileged to know her mother unanimously attest to her angelic nature and her unusually beautiful disposition.

8. We acknowledge that Maryfrances Cassell relied upon our commitment in her decision to sponsor the music studio, and without our commitment she could not have become involved. We regret that our actions in reversing our commitment disrupted the studio and caused great damage. We hereby retract our reversal and seek to repair the damage it caused by restoring to Maryfrances Cassell her financial losses which she has suffered due to our reversal and ensuing conduct, the monetary amount to be mutually determined after the signing of the retractions.

9. We acknowledge that our ministers who were responsible for this commitment to Maryfrances Cassell -- Henry Garber, Henry Frank, Amos Hess, and George Leaman -- all acted in consonance with God as is proven by the excellent fruitage which resulted from that household and studio activity during the fifteen years in which the studio achieved a very high degree of excellence. We

retract our statement that these ministers erred. We regret that the ministers who succeeded then acted irresponsibly by not seeking their wisdom nor following their sound advice to honor this commitment.

10. we have respect for Maryfrances Cassell and her household and the music studio activity and for her witness in the community, and we pledge to make this known among our people and throughout the community and wherever else necessary to correct our mistake, and we hereby renounce, retract, and recant our statement that, "What was done had to be done. " and correct it by stating unequivocally that, "What was done should never have been done and must be rectified, -- that the household of Maryfrances Cassell should never have been disrupted by the church, because it was a Godsend to each of its members and to the community."

"For out Of the heart proceed evil thoughts ....:
these are the things which defile a man."

"And ye shall know the truth,
and the truth shall make you free."
Christ Jesus

We, the undersigned, agree in essence on the foregoing retractions and recommend them for your consideration and approval

Robert H. Garber

Maryfrances Cassell

Dated: 9 / 88

Ervin R. Stutzman, Bishop
Landisville District

Noah L. Hershey,
Moderator,
Lancaster Mennonite Conference

Dated:

EXHIBIT A

A STATEMENT OF RETRACTIONS

1. We, the leadership of the Mount Joy Mennonite Church, do hereby admit that we made an error of judgement in the reversal of our commitment to Maryfrances Cassell of Mount Joy, Pennsylvania. We admit that this reversal was made without approaching Maryfrances or forewarning her of our reversal. We regret that a proper investigation was not conducted by the ministry of 'the church.

2. We acknowledge that our ministers who .,were responsible for this commitment to Maryfrances Cassell -- Henry Garber, Henry Frank, Amos Hess, George Lehman, and Raymond Charles -- all acted in good conscience as seemed evident in the excellent fruitage which resulted from that household and studio activity during the fifteen years in which -the studio achieved a very high degree of excellence. We regret that the ministers who succeeded them acted irresponsibly by not seeking their wisdom nor following their sound advice to honor this commitment.

3. We regret that we -were unsuspectingly drawn into a secret plan which eventually drew members from the congregation into the disruption of Maryfrances Cassell's household and -the music studio, thus violating the trust which Maryfrances had in the leadership team, and on which she rightfully relied. We admit and regret that our ensuing conduct, improper accusations, attitude, and treatment of Maryfrances Cassell during these past eight years has at times been unfounded and unjust.

4. We acknowledge that Maryfrances Cassell relied upon our commitment in her decision to sponsor the music studio. We regret that our actions in reversing our commitment disrupted the studio and Maryfrances' life. We hereby, retract our reversal and seek to repair the damage

as mutually agreed upon by Maryfrances Cassell and the Mount Joy Mennonite Church.

5. The life record of Maryfrances Cassell has proven her professional and personal character to be commendable. Since God only knows the hearts of others, we are unable to go farther than to let Maryfrances' life record stand undisturbed. "Give her the fruit of her hands, and let her own works praise her in the gates" (Proverbs 33:31).

6. We have no concrete evidence of many of the accusations concerning Maryfrances, Cassell and her conduct in her household and the music studio endorsed by the earlier leadership. We regret and retract all of our 'evil thinking and slander, especially any suggestions of immorality, abuse, undue influence, financial dishonesty, demonolatry, or demagoguery on the part of Maryfrances Cassell, these having been based solely upon hearsay.

7. We acknowledge that we have known from the outset that Maryfrances Cassell is a life Ions student of Christian Science, and therefore we should have approached her when we desired to understand Christian Science, rather 'then circulating an uncomplimentary book about Christian Science. we hereby retract our accusations about Christian Science being evil and any implications about Maryfrances Cassell being "the evil one." We acknowledge that Christendom in general has recognizes Christian Science as a re2religion based on the Word and works of Christ Jesus. -Because our Mennonite understandings regarding salvation and a right relationship with God differ from-Christian Science, we have at times given responses to Maryfrances which have been interpreted as evil thoughts, as a desire to cast doubts upon her integrity and honesty, or as a desire to destroy her. We ask forgiveness from her and from God where this has been the case. We intend, by God's help, to avoid giving such responses in the future.

8. We have never observed the household of Maryfrances Cassell firsthand. Therefore we have no right to condemn it on that basis. If whatever we have done has cast any doubt upon the integrity, morals, conduct, or honor of Maryfrances Cassell and her household, it is inappropriate, and we are sorry and hereby retract it.

9. We renounce and retract any discourse maligning the character of Maryfrances Cassell's mother. We acknowledge that those who were privileged to know her mother attest to her angelic nature and her unusually beautiful disposition.

This paper is freely submitted as a basis for healing of our relationship. We understand that nothing within this document will be considered admissible as evidence in a court of law.

Signed_____

Witness_____

Date_____

EXHIBIT B

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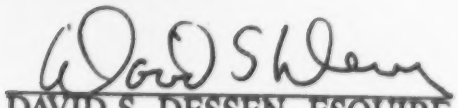
CERTIFICATION OF SERVICE

DAVID S. DESSEN, ESQUIRE, hereby certifies that a true and correct copy of the within Petition for Writ of Certiorari was served on below listed counsel, by first class mail, postage pre-paid on March 28, 1994:

Vivian B. Narehood, Esquire
Gibble, Kraybill & Hess
41 East Orange Street
Lancaster, PA 17602



DAVID S. DESSEN, ESQUIRE

DATE: 3/28/94